

STATE OF MICHIGAN
COURT OF APPEALS

LAUREL A. KENDALL,

Plaintiff-Appellant,

v

STATE BAR OF MICHIGAN and THOMAS M.
COOLEY LAW SCHOOL,

Defendants-Appellees,

and

KAREN S. KIENBAUM & ASSOCIATES and
WAYNE STATE UNIVERSITY LAW SCHOOL,

Defendants.

UNPUBLISHED

August 26, 2008

No. 277330

Eaton Circuit Court

LC No. 07-000019-AS

Before: Whitbeck, P.J., and Owens and Gleicher, JJ.

PER CURIAM.

In this suit for superintending control, appellant Laura Kendall appeals as of right an order granting summary disposition in favor of appellees Thomas M. Cooley Law School (Cooley) and the State Bar of Michigan (the State Bar) and awarding Cooley and the State Bar sanctions. Wayne State University (Wayne) and Karen S. Kienbaum & Associates (Kienbaum) were both dismissed from the case with prejudice and are not parties to this appeal. On appeal, Kendall argues that the trial court improperly granted summary disposition in favor of Cooley and the State Bar. We conclude that the trial court did not have the authority to exercise superintending control over Cooley or the State Bar because neither is a lower tribunal.¹ For this reason, we affirm.

I. Basic Facts And Procedural History

Kendall graduated from Cooley in May 2005. In November 2005, Kendall received notice that she had passed the Michigan Bar Examination, but that her results were not yet official because the State Bar Committee on Character and Fitness had not yet issued a favorable recommendation. Kendall was scheduled to interview with the District Character and Fitness Committee (the District Committee) in December 2005.

¹ See MCR 3.302.

Kendall hired Kienbaum to represent her through the character and fitness evaluation process. Although Kendall initially received an unfavorable recommendation from the District Committee, the Standing Committee gave the Board of Law Examiners a favorable recommendation. And the State Bar eventually licensed Kendall.

During the evaluation process, Kendall had enrolled in an LLM program at Wayne. As a result of her interactions with individuals at Wayne, Kendall became convinced that her character and fitness record with the State Bar contained false reports and that those reports had been disseminated to the faculty at Wayne. Kendall also became convinced that the State Bar was intentionally withholding these false reports from her.

Based on her beliefs, Kendall sued. In her suit, Kendall alleged, among other things, that certain documents in her character and fitness file were improperly withheld from her and that the State Bar improperly released those documents to Wayne. For this reason, Kendall asked the circuit court to exercise its power of superintending control over her character and fitness file. Although her suit was for superintending control, Kendall named the State Bar, Cooley, Wayne and Kienbaum as parties in some capacity.

Cooley and the State Bar both moved for summary disposition on a variety of grounds. After a hearing, the trial court concluded that summary disposition was appropriate, in part, because Cooley and the State Bar were not lower tribunals that were amendable to the court's power of superintending control. The trial court also found that Kendall's suit warranted sanctions and ordered Kendall to pay Cooley and the State Bar's reasonable attorney fees.

After the trial court's grant of summary disposition, Kendall filed three separate appeals: she appealed the order granting summary disposition in favor of Cooley and the State Bar as of right, she also requested an appeal by leave, and she moved this Court to exercise superintending control. This Court denied the request for leave because the claims could be brought in her appeal as of right,² and dismissed her motion for superintending control for failure to pursue it in conformity with the court rules.³ Hence, only her appeal as of right remains.

II. Summary Disposition; Superintending Control

A. Standard Of Review

This Court reviews de novo both the trial court's decision to grant summary disposition and questions of law such as the proper interpretation of court rules and statutes.⁴

² *Kendall v State Bar of Michigan*, unpublished order of the Court of Appeals, entered June 15, 2007 (Docket No. 277329).

³ *Kendall v State Bar of Michigan*, unpublished order of the Court of Appeals, entered June 15, 2007 (Docket No. 277779).

⁴ *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

B. Superintending Control Of Lower Tribunals

A writ of superintending control is an original action designed to order a lower court or tribunal to perform a legal duty.⁵ Because the circuit court's power to exercise superintending control is limited to lower courts and tribunals, in order to grant relief, Cooley and the State Bar would have to be lower courts or tribunals of the circuit court. Yet, Kendall concedes that Cooley is not a court or tribunal. Hence, the trial court correctly granted summary disposition in favor of Cooley. Likewise, even if the State Bar or its committees were tribunals, they are clearly not lower tribunals amendable to the circuit court's power of superintending control.

Our Supreme Court is vested with the power to regulate the practice of law within Michigan.⁶ And the State Bar was created by statute "to provide for the organization of an agency that should function pursuant to rules and regulation prescribed by the Supreme Court for the purpose of performing, and assisting in the performance of functions that, in the final analysis, pertain to the judiciary."⁷ Like the Board of Law Examiners,⁸ the State Bar's committees on character and fitness act under our Supreme Court's authority to regulate the practice of law in this State. Indeed, the State Bar's character and fitness committees work with the Board of Law Examiners in determining an applicant's suitability to practice law. And the Board of Law Examiners is subject to the superintending control power of our Supreme Court alone.⁹

Because Cooley and the State Bar are not lower courts or tribunals in relation to the circuit court, their actions are not subject to its superintending control. Therefore, the trial court properly determined that Kendall was not entitled to relief under a writ of superintending control. Because of our resolution of this issue, we need not consider Kendall's other claims of error. As to the issue of sanctions, we deem this issue abandoned on appeal.

Affirmed.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Elizabeth Gleicher

⁵ See MCR 3.302; *Shepherd Montessori Center Milan v Ann Arbor Twp*, 259 Mich App 315, 346-347; 675 NW2d 271 (2003).

⁶ Const 1963, art 6, § 5; *Grievance Admin v Lopatin*, 462 Mich 235, 241; 612 NW2d 120 (2000).

⁷ *State Bar of Michigan v Lansing*, 361 Mich 185, 194; 105 NW2d 131 (1960).

⁸ See *Scullion v Bd of Law Examiners*, 102 Mich App 711, 714-716; 302 NW2d 290 (1981).

⁹ See MCR 7.304(A); see also MCR 3.302(B) (stating that if another adequate remedy is available to the party seeking the order, "a complaint for superintending control may not be filed," and directing the reader to MCR 7.304(A)).